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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 INTERNATIONAL INSTITUTE OF
8 MANAGEMENT,

9 Plaintiff(s),

10 v.

11 ORGANIZATION FOR ECONOMIC
12 COOPERATION AND DEVELOPMENT, et al,

13 Defendant(s).

Case No. 2:18-CV-1748 JCM (GWF)

ORDER

14 Presently before the court is defendant Joseph Stiglitz' motion to dismiss. (ECF No. 19).
15 Plaintiff International Institute of Management ("IIM") filed a response (ECF No. 33), to which
16 Stiglitz replied (ECF No. 35).

17 Also before the court is defendant Organization for Economic Cooperation and
18 Development's ("OECD") motion to dismiss. (ECF No. 21). IIM filed a response (ECF No.
19 34), to which OECD replied (ECF No. 37). IIM also filed a surreply (ECF No. 44), to which
20 OECD responded (ECF No. 47).

21 **I. Facts**

22 This is a copyright infringement action in which IIM alleges that the OECD, a Paris-
23 based intergovernmental organization for economic research and policy, and Stiglitz, a Nobel
24 laureate and professor of economics at Columbia University, allegedly stole credit for IIM's
25 work on using non-GDP factors to measure the well-being of countries. (ECF No. 1).

26 IIM is a small, Nevada think tank that publishes economics papers on the internet. *Id.* In
27 2005, IIM published a two-page paper titled "Gross National Well-being (GNW) Index" ("2005
28 paper"). *Id.* The 2005 paper generally discusses the idea of using non-GDP factors to measure

1 the well-being of countries and provides seven factors that such an index might use. (ECF No.
2 23-2). The 2005 paper does not show how to use these factors to measure a country's well-
3 being. *Id.*

4 In 2006, IIM published a second paper titled "The American Pursuit of Unhappiness"
5 ("2006 paper"). (ECF No. 1). The 2006 paper is six pages long and generally discusses why a
6 nation's happiness should be measured with non-GDP factors. (ECF No. 23-3). The paper also
7 elaborates on non-GDP factors that various measurement approaches might use. *Id.* Like the
8 2005 paper, the 2006 paper does not provide any solution on how to measure the well-being of
9 countries with non-GDP factors. *Id.*

10 The OECD's Commission on the Measurement of Economic Performance and Social
11 Progress (the "commission") conducts research on measuring the well-being of countries. (ECF
12 No. 1). Stiglitz, who is a resident of New York, is the chairman of the commission and
13 substantially contributed to various reports and articles that the commission published. *Id.*

14 In 2009, the commission published a 291-page report titled "Report by the Commission
15 on the Measurement of Economic Performance and Social Progress" ("2009 report"). (ECF Nos.
16 1, 23-4). Twenty-two commissioners, five of whom are Nobel laureates, wrote the 2009 report,
17 which discusses the limits of GDP as an indicator of economic performance. (ECF No. 23-4).
18 The report also extensively addresses problems with various measurement techniques and how to
19 improve upon existing methods to determine the well-being of countries. *Id.*

20 In 2011, the OECD created the Better Life Index, which uses non-GDP factors to
21 measure the well-being of countries. (ECF No. 23-5). The OECD published the index on the
22 internet on an interactive website that millions of people have used to compare the well-being of
23 countries. *Id.* According to the complaint, Stiglitz is also selling a book on Amazon.com which
24 contains material from IIM's copyright protected works. (ECF No. 1). IIM alleges that the 2009
25 report, the Better Life Index, and Stiglitz' book infringe on its copyrights in the 2005 and 2006
26 papers. *Id.*

27 On September 10, 2018, IIM initiated this action, asserting four causes of action: (1)
28 copyright infringement; (2) vicarious and/or contributory copyright infringement; (3) unfair

1 competition; and (4) false advertising in violation of the Lanham Act. *Id.* Now, OECD and
2 Stiglitz move to dismiss the complaint. (ECF Nos. 19, 21).

3 **II. Legal Standard**

4 Federal Rule of Civil Procedure 12(b)(2) allows a defendant to move to dismiss a
5 complaint for lack of personal jurisdiction. *See* Fed. R. Civ. P. 12(b)(2). To avoid dismissal
6 under Rule 12(b)(2), a plaintiff bears the burden of demonstrating that its allegations establish a
7 *prima facie* case for personal jurisdiction. *See Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th
8 Cir. 2008). Allegations in the complaint must be taken as true and factual disputes should be
9 construed in the plaintiff's favor. *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1019 (9th
10 Cir. 2002).

11 "When no federal statute governs personal jurisdiction, the district court applies the law
12 of the forum state." *Boschetto*, 539 F.3d at 1015; *see also Panavision Int'l L.P. v. Toeppen*, 141
13 F.3d 1316, 1320 (9th Cir. 1998). Where a state has a "long-arm" statute providing its courts
14 jurisdiction to the fullest extent permitted by the due process clause, as Nevada does, a court
15 need only address federal due process standards. *See Arbella Mut. Ins. Co. v. Eighth Judicial*
16 *Dist. Court*, 134 P.3d 710, 712 (Nev. 2006) (citing Nev. Rev. Stat. § 14.065); *see also Boschetto*,
17 539 F.3d at 1015.

18 An assertion of personal jurisdiction must comport with due process. *See Wash. Shoe*
19 *Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 672 (9th Cir. 2012). Two categories of personal
20 jurisdiction exist: (1) general jurisdiction; and (2) specific jurisdiction. *See Helicopteros*
21 *Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 413–15 (1984); *see also LSI Indus., Inc. v.*
22 *Hubbell Lighting, Inc.*, 232 F.3d 1369, 1375 (Fed. Cir. 2000).

23 General jurisdiction arises where a defendant has continuous and systematic ties with the
24 forum, even if those ties are unrelated to the litigation. *See Tuazon v. R.J. Reynolds Tobacco*
25 *Co.*, 433 F.3d 1163, 1171 (9th Cir. 2006) (citing *Helicopteros Nacionales de Columbia, S.A.*, 466
26 U.S. at 414–16). "[T]he plaintiff must demonstrate the defendant has sufficient contacts to
27 constitute the kind of continuous and systematic general business contacts that approximate
28 physical presence." *In re W. States Wholesale Nat. Gas Litig.*, 605 F. Supp. 2d 1118, 1131 (D.

1 Nev. 2009) (internal quotation marks and citations omitted). In other words, defendant's
2 affiliations with the forum state must be so "continuous and systematic" as to render it
3 essentially "at home" in that forum. *See Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014).

4 Specific jurisdiction arises where sufficient contacts with the forum state exist such that
5 the assertion of personal jurisdiction "does not offend 'traditional notions of fair play and
6 substantial justice.'" *Int'l Shoe Co.*, 326 U.S. at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457,
7 463 (1940)). The Ninth Circuit has established a three-prong test for analyzing an assertion of
8 specific personal jurisdiction:

9 (1) The non-resident defendant must purposefully direct his activities or
10 consummate some transaction with the forum or resident thereof; or perform
11 some act by which he purposefully avails himself of the privilege of conducting
12 activities in the forum, thereby invoking the benefits and protections of its laws;

12 (2) the claim must be one which arises out of or relates to the defendant's forum-
related activities; and

13 (3) the exercise of jurisdiction must comport with fair play and substantial justice,
14 *i.e.*, it must be reasonable.

15 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). "The plaintiff
16 bears the burden of satisfying the first two prongs of the test. If the plaintiff fails to satisfy either
17 of these prongs, personal jurisdiction is not established in the forum state." *Id.* (citations
omitted).

18 **III. Discussion**

19 As a preliminary matter, the court notes that the complaint refers to various publications
20 that the litigants published. *See* (ECF No. 1). Defendants have provided these publications to
21 the court and IIM has not disputed their authenticity. (ECF Nos. 22, 23). Therefore, the court
22 will consider those documents pursuant to the doctrine of incorporation by reference. *See*
23 *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006) (holding that the doctrine of incorporation
24 by reference applies to documents that plaintiffs do not attach to their complaint). The court now
25 proceeds to determine whether it has personal jurisdiction over the defendants.

26 *a. General jurisdiction.*

27 A court has general jurisdiction over parties that are "at home" in the forum state. *See*
28 *Daimler*, 571 U.S. at 137 (describing the general jurisdiction analysis for corporations). "For an

1 individual, the paradigm forum for the exercise of general jurisdiction is the individual's
2 domicile.” *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 564 U.S. 915, 924 (2011).
3 Stiglitz is not domiciled in Nevada because he lives and works in New York. *See* (ECF No. 1).
4 Therefore, the court does not have general jurisdiction over Stiglitz.

5 For a corporation, “the place of incorporation and principal place of business are
6 paradigm bases for general jurisdiction.” *See Daimler*, 571 U.S. at 137 (citation omitted). A
7 corporation may also be subject to general jurisdiction in a forum where it has engaged in
8 “substantial, continuous, and systematic courses of business” so as to render it “at home” in that
9 forum. *Id.* at 137–38. The court does not have general jurisdiction over the OECD because
10 Nevada is not its place of incorporation or principal place of business. *See* (ECF No. 1). The
11 OECD also does not have continuous and systematic contact with Nevada. *See id.*

12 *b. Specific jurisdiction*

13 IIM’s last resort to avoid dismissal under rule 12(b)(2) is to demonstrate that its
14 allegations establish a *prima facie* case for specific jurisdiction. *See Boschetto*, 539 F.3d at
15 1015. To establish a *prima facie* case, ATM must satisfy the first two prongs of the test for
16 specific jurisdiction. *See Schwarzenegger*, 374 F.3d at 802.

17 *i. Purposeful direction*

18 The first prong requires that the defendant either purposefully directed its activities at
19 residents of the forum or purposefully availed itself of the privilege of doing business in the
20 forum. *Wash. Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 672 (9th Cir. 2012). Because
21 copyright infringement actions sound in tort, the Ninth Circuit requires a plaintiff to establish
22 purposeful direction under the *Calder*-effects test. *Mavrix Photo, Inc. v. Brand Technologies,*
23 *Inc.*, 647 F.3d 1218, 1228–32 (9th Cir. 2011) (applying the *Calder*-effects test to a copyright
24 infringement claim); *but see Freestream Aircraft (Bermuda) Limited v. Aero Law Group*, 905
25 F.3d 597, 604 (9th Cir. 2018) (limiting the *Calder*-effects test to conduct that takes place outside
26 the forum state).

27 Under the *Calder*-effects test, a plaintiff must show that the defendant (1) committed an
28 intentional act; (2) expressly aimed at the forum state; and (3) the defendant knew that the brunt

1 of the harm was likely to be suffered in the forum state. *Washington Shoe Co. v. A–Z Sporting*
2 *Goods, Inc.*, 704 F.3d 668, 673 (9th Cir. 2012).

3 IIM argues that the defendants intentionally aimed their acts at Nevada by operating the
4 Better Life Index on a website, selling a book with allegedly infringing materials on
5 Amazon.com, and publishing the 2009 report online. (ECF Nos. 33, 34). However, merely
6 uploading materials on a passive website and placing products in the stream of commerce are not
7 affirmative acts that directly target Nevada. *See Brayton Purcell LLP v. Recordon & Recordon*,
8 606 F.3d 1124, 1129 (9th Cir. 2010); *see also Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414,
9 418 (9th Cir. 1997).

10 The court further notes that the complaint does not contain any allegations of specific
11 conduct related to Nevada other than IIM’s contacts with the forum. *See* (ECF No. 1). Because
12 defendants generally aimed their conduct at the United States and the world, the alleged harm
13 would have occurred wherever IIM resided. Thus, holding that the defendants aimed their
14 conduct at Nevada would “impermissibly allow a plaintiff’s contacts with the defendant and
15 forum to drive the jurisdictional analysis.” *Walden v. Fiore*, 571 U.S. 277, 289 (2014).

16 *ii. Forum-related Activities*

17 The second prong of the specific jurisdiction analysis requires that the plaintiff’s claim
18 arise out of the defendant’s forum-related activities. *Schwarzenegger*, 374 F.3d at 802. This
19 inquiry turns on whether the plaintiffs would not have been injured “but for” the defendant’s
20 forum-related activities. *See Panavision*, 141 F.3d at 1322; *Ballard v. Savage*, 65 F.3d 1495,
21 1500 (9th Cir. 1995). Activities that are “too attenuated” do not satisfy the but-for test. *Doe v.*
22 *American Nat’l Red Cross*, 112 F.3d 1048, 1051 (9th Cir. 1997).

23 Defendants allegedly harmed IIM by publishing the 2009 report online, selling a book on
24 Amazon.com, and maintaining a website with the Better Life Index. (ECF No. 1). These acts do
25 not constitute forum-related activities because their only connection to this forum is that IIM
26 coincidentally resides in Nevada. Therefore, IIM’s claims did not arise from defendants’ forum-
27 related activities.

28 . . .

1 *iii. Reasonableness*

2 To determine if the exercise of jurisdiction comports with “fair play and substantial
3 justice,” and is therefore “reasonable,” the court considers the following seven factors:

- 4 (1) the extent of the [defendant’s] purposeful injection into the forum state’s
5 affairs;
6 (2) the burden on the defendant of defending in the forum;
7 (3) the extent of conflict with the sovereignty of the defendant’s state;
8 (4) the forum state’s interest in adjudicating the dispute;
9 (5) the most efficient judicial resolution of the controversy;
10 (6) the importance of the forum to the plaintiff’s interest in convenient and
11 effective relief; and
12 (7) the existence of an alternative forum.

13 *Dole Food Co. v. Watts*, 303 F.3d 1104, 1114 (9th Cir. 2002). “No one factor is dispositive; a
14 court must balance all seven.” *Panavision Int’l L.P. v. Toeppen*, 141 F.3d 1316, 1323 (9th Cir.
15 1998).

16 Litigating in Nevada would be remarkably burdensome because Stiglitz resides in New
17 York and the OECD’s United States branch is in Washington, D.C. Forcing defendants to travel
18 to a distant forum to adjudicate an action based on activities that largely occurred on the internet
19 would be inefficient and costly. Moreover, nothing in the record indicates that evidence and
20 witnesses are in Nevada other than the few individuals that work at IIM. Indeed, considering
21 that defendants have not injected themselves into Nevada, this action should be litigated in
22 another forum.

23 **IV. Conclusion**

24 The court does not have personal jurisdiction over the OECD and Stiglitz because they
25 did not purposefully direct their activities at Nevada and IIM’s claims did not arise from forum-
26 related activities. Even if the OECD and Stiglitz had minimum contacts in Nevada, exercising
27 jurisdiction would be unreasonable. Therefore, the court will dismiss this action without
28 prejudice.

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Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Stiglitz’ motion to dismiss (ECF No. 19) be, and the same hereby is, GRANTED, consistent with the foregoing.

IT IS FURTHER ORDERED that the OECD’s motion to dismiss (ECF No. 21) be, and the same hereby is, GRANTED, consistent with the foregoing.

The clerk shall enter judgment accordingly and close the case.

DATED June 20, 2019.


UNITED STATES DISTRICT JUDGE